IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.274 of 2003.

With
Cross-objections No.423/03.

Reserved on:30.05.2007.

Decided on: *July 02, 2007*

Himachal Road Transport Corp. ***…..Appellant.***

VERSUS

Hark Bahadur & Another. ***…..Respondents.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant : Mr.Raman Sethi, Advocate.

For the Respondents : Mr.K.D.Sood with Mr.B.K.Sood, Advocates for respondent No.1.

Mr.Romesh Verma, Advocate for respondent No.2.

Kuldip Singh, Judge

This judgment shall dispose of FAO (MVA) No.274 of 2003 and Cross-objections No.423 of 2003. H.R.T.C. (for short 'Corporation'), owner of recovery van No.HP-07-3187, is in appeal against the award dated 11.3.2003 passed by learned Motor Accident Claims Tribunal, Solan in MAC Petition No.38-S/2 of 2002 awarding Rs.4,50,000/- compensation to claimant / petitioner and against the owner and driver of the recovery van jointly and severally along with interest at the rate of 9% per annum from the date of filing the petition

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[1] *Whether the reporters of the local papers may be allowed to see the Judgment ? yes*

till its deposit. The parties are referred in the same manner as in the impugned award.

2. The brief facts of the case are that Hark Bahadur aged 27 years was driving Scooter No.DIF-2286 on 10.11.1999 towards Solan, Jai Chand was pillion rider on the scooter. At place Salogra, the scooter No.DIF-2286 was hit by recovery van No.HP-07-3187 owned by Corporation respondent No.1 and was being driven rashly and negligently by respondent No.2 at the time of accident. The petitioner fell down from the scooter and sustained injuries in the accident as a result of which he became paraplegic with 100% disability. The petitioner was treated at District Hospital, Solan, PGI Chandigarh where he remained indoor patient from 10.11.1999 to 8.12.1999. He was admitted in District Hospital, Solan from 8.12.1999 to 25.1.2000. The petitioner made 30 visits to PGI Chandigarh for treatment. He had to go along with two attendants in private taxi. The petitioner had engaged a part-time helper at the rate of Rs.600/- per month since January 2000 and had spent taxi charges at the rate of Rs.1000/- per visit. He had spent about Rs.2 lacs on his treatment and was totally bed ridden. The petitioner has, thus, claimed Rs.12,16,800/- by way of compensation from the respondents along with 18% interest per annum.

3. The petition has been contested and a joint reply was filed by respondents No.1 and 2 in which preliminary objections of estoppel, maintainability have been taken. It has been alleged that

petitioner himself was negligent in driving scooter No.DIF-2286. On merits, accident has been admitted but it has been alleged that accident had taken place due to negligence of petitioner. The claim of the petitioner was denied. It has been submitted that in any case the compensation claimed is excessive. The rash and negligent driving on the part of respondent No.2 was denied.

4. The learned tribunal has held that accident had taken place due to rash and negligent driving of both petitioner as well as respondent No.2. In terms of percentage the contribution of respondent No.2 for the accident has been held 60% and that of petitioner 40% and ultimately learned tribunal has passed the impugned award along with interest, as noticed above. The Corporation has come in appeal against the impugned award and the petitioner has also filed the cross-objections in the appeal for enhancement of compensation. An application dated 6.5.2007 being CMP(M) No.310 of 2007 has been filed under Section 5 of the Limitation Act for condonation of delay in filing cross-objections which were filed on 14.7.2003. The application is supported by an affidavit, no reply has been filed to the application, therefore, for the reasons stated in application, the same is allowed and cross-objections are taken on record.

5. I have heard the learned counsel or the parties and have also gone through the record.

6. The learned counsel for respondent No.1 Corporation has submitted that accident had not taken place due to rash and negligent driving of respondent No.2 driver of recovery van. The accident had taken place due to rash and negligent driving of petitioner himself. The learned tribunal has wrongly held that respondent No.2 contributed 60% for the accident. The tribunal has awarded excess compensation to the petitioner. On the contrary, learned counsel for the petitioner has submitted that the tribunal has erred in returning the finding that the contribution of the petitioner for the accident is 40%. In fact, accident had taken place due to rash and negligent driving of respondent No.2. The tribunal has awarded less compensation to the petitioner.

7. PW-1 Dr.Anil Bansal, Orthopaedic Surgeon, Zonal Hospital, Solan has stated that he was one of the members of handicapped board. On examining the patient, they found that patient had suffered injury and was paraplegic to the extent of 100% and he proved disability certificate Ext.P-1 of the petitioner. In cross examination, he has deposed that the petitioner cannot sit himself properly and he requires assistance. He has further stated that due to paraplegic, life expectancy has been reduced as it involves complications of bladder and mental trauma to the patient. He has denied that earning capacity is not affected to the extent of 100%. The petitioner has appeared as PW-2 and has stated that he was driving the scooter with Jai Chand as pillion rider. A truck came towards them

and hit the scooter from right side of the bumper as a result of which he fell down and became unconscious. He regained consciousness in the hospital. The truck was followed by bus. He lost sensation after severe pain in his back with respect to the lower limbs. He was referred to Government Medical College, Chandigarh. He remained in the hospital for 15 days. Thereafter, he got treatment from outside. He was referred to Zonal Hospital, Solan where he remained admitted for one month. He was operated upon in Chandigarh. He has proved treatment card Ext.PW-2/A. He went to Chandigarh 35-40 times in private vehicle for treatment. He could not travel in bus. Two persons used to accompany him to Chandigarh. He has spent about Rs.2 lacs on operation. He has paid Rs.1800/- per month for physiotherapy to Madan Lal, resident of Solan. Before accident, he was employed as Peon on daily wages in Agro Company. He was doing graduation but due to accident he could not complete his graduation. He was getting Rs.51/- per day. After the accident, he was terminated vide Ext.PW-2/B. He has stated that he could not work and sit. He requires the assistance for doing any work. He has kept Ramesh as attendant for the last two years on Rs.600/- per month. He was on his side and was driving very slowly. The truck was in high speed and on wrong side. Later on, he came to know that it was recovery van of Corporation. In cross-examination, he has stated that he cannot work because of immobility of lower limbs. He has denied that he was driving the scooter rashly and negligently.

8. PW-3 Jai Chand, pillion rider of the scooter, has stated that when they crossed Salogra and were on the left side on a curve they were hit by a recovery van and they fell down. The accident took place due to the negligence of the driver of the recovery van. The petitioner fell down and sustained injuries. He was admitted in hospital. Later on he was referred to Government Medical College, Chandigarh. After accident the petitioner could not walk and he requires support. He has kept Ramesh Kumar attendant at Rs.600-700/- per month since January 2000. The recovery van was carrying a bus.

9. PW-4 Rajesh Mehta, Branch Manager, H.P. Agro Industries Corporation Ltd., has stated that the petitioner was working in their Company since 1994. He was employed on daily wages at Rs.51/- per day and was getting Rs.1497 bonus per year. On the ground of disability he was discharged from service.

10. RW-1 Bansi Lal, driver has stated that on 10.11.1999 he was going to Parwanoo and was carrying accidental bus loaded on crane from Shimla. He was driving the crane. The scooterist with pillion rider came from the opposite side. On seeing him, he stopped the crane on the left side of the road but the scooter struck with left bumper of crane after crossing the road diagonally. The scooter driver was driving the scooter in rash and negligent manner. From front of the crane till the end of the bus, which was being carried, the length

was about 50 feet. He has admitted that to negotiate the curve about 55 feet was required by the crane along with the load.

11. RW-2 Babu Ram, Technician has stated that he was in the crane on 10.11.1999. They noticed a scooter coming from opposite side with pillion rider in high speed. They stopped the crane and scooter hit on the left side of the crane after crossing the road. There was a wide curve at the point of accident and the road was about 33 feet wide at the place of accident.

12. RW-3 Dharam Dev has stated that on 10.11.1999 he was in the crane. On seeing the scooter, they took the crane on the extreme left side but scooter hit on front excel of the crane. They took out scooter and scooterist from beneath the crane and took him to hospital.

13. There is apparent contradiction in the evidence led by the respondents. RW-1 and RW-2 have stated that they stopped the crane and scooter hit left bumper of the crane after crossing the road diagonally. RW-3 has not stated that the crane was stopped, rather he said that scooter hit front excel of the crane. The scooter and scooterist were taken out from beneath the crane. This proves that the respondents have not come forward with true facts how the accident has occurred. The fact that the scooter and scooterist were taken out from beneath the crane proves that the crane driver was negligent only then the scooter and scooterist came under the crane. The tribunal has appreciated the evidence in right perspective and has

rightly come to the conclusion that petitioner as well as respondent No.2 were negligent. The respondent No.2 was driving a heavy vehicle, he should have been more careful while driving the vehicle. The learned tribunal has rightly held it to be a case of contributory negligence, petitioner having 40% and respondent No.2 60% negligence for causing the accident. The respondent No.2 has accepted the award and has not filed the appeal, therefore, as against him the award has become final. Therefore, the respondent No.1 Corporation is bound by the finding on negligence of the tribunal once respondent No.2 by his conduct has accepted his negligence.

14. The tribunal has awarded Rs.4,50,000/- compensation to the petitioner keeping in view his negligence 40% for causing the accident. The tribunal has awarded various amounts under different heads in Para-13 of the impugned award. The petitioner is paraplegic with 100% disability as per Ext.P-1. The treatment record of the petitioner is Ext.PW-2/A. The tribunal has not awarded any amount to the petitioner for loss of expectancy of life whereas PW-1 Dr.Anil Bansal has specifically stated that expectancy of the life is reduced due to paraplegic conditions. It has been urged by learned counsel for the Corporation that without any proof of medical expenses the tribunal has awarded Rs.2 lacs to the petitioner. The tribunal has noticed insufficiency of evidence regarding proof of medical expenses and, therefore, has allowed Rs.2 lacs for medical expenses keeping in view the nature of injuries and treatment record Ext.PW-2/A. The

learned counsel for the petitioner has submitted that in compensation case the tribunal has jurisdiction to award compensation keeping in view the total facts and circumstances of the case. He has submitted that to some extent the amount can be awarded on conjectures also. He has relied upon ***M/s.Sheikhupura Transport Co. Ltd. Versus Northern India Transporters Insurance Co. Ltd. & another etc. [AIR 1971 SC 1624]*** for this proposition. In Para-6 of the judgment, the Supreme Court has held as follows:-

> "Under Section 110B of the Motor Vehicles Act, 1939 the tribunal is required to fix such compensation which appears to it to be just. The power given to the tribunal in the matter of fixing compensation under that provision is wide. Even if we assume (we do not propose to decide that question in this case) that compensation under that provision has to be fixed on the same basis as is required to be done under Fatal Accidents Act, 1855 (Act 13 of 1855), the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture. ……"

15. In ***Nagappa Versus Gurudayal Singh & Others [AIR 2003 SC 674]*** in Para-19 the Supreme Court has observed as follows:-

> "The aforesaid decision of the Bombay High Court was relied upon and referred to by the Orissa

> High Court in *Mulla Md. Abdul Wahib v. Abdul Rahim and another (1994 ACJ 348) and G. B.Pathak, J.* as he then was) observed that the expression "just compensation" would obviously mean that is fair, moderate and reasonable and awardable in the proved circumstances of a particular case and the expression "which appears to it to be just" vests a wide discretion in the Tribunal in the matter of determining of compensation. Thereafter, the Court referred to the decision in *Sheikhupura Transpsort Co. Ltd. (Supra)* and held that the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture, and if this is so, then it will be unreasonable to expect the party to state precisely the amount of damages or compensation that it would be entitled to."

16. In ***R.D.Hattangadi Versus Pest Control (India) Pvt. Ltd. & Others [(1995) 1 SCC 551]***, the Supreme Court has held that while fixing the amount of compensation payable to a victim the damages have to be assessed separately as pecuniary damages and special damages. In Para-9 of the judgment, the Supreme Court has further held as under:-

> "Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages.

> Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

17. In ***M/s Sheikhupura Transport Co. Ltd. (supra),*** in Para-7, the Supreme Court has held as follows:-

> "The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. If the assessment made by the High

> Court cannot be considered to be unreasonable – and we do not think it to be unreasonable – it will not be proper for this Court to interfere with the same. Taking an overall assessment of the facts and circumstances of this case, we are unable to agree with the contention of the appellant's counsel that the compensation awarded to the legal representatives of the deceased persons is excessive…."

18. Therefore, what is to be seen is the overall facts and circumstances of the case for awarding compensation. The petitioner was employed on daily wages and was being paid Rs.51/- per day and was getting Rs.1497 bonus per year and was in service since 1994. On the ground of disability he was discharged from service. He was 25 years of age at the time of accident. He is 100% paraplegic. Nobody knows how many more years he will have to spend in the same condition. He requires attendant throughout his remaining life. He will be requiring treatment in future also. He will remain under constant pain and suffering for the rest of his life. For him life is nothing but to remain on the bed. He has lost everything except that he is breathing. The learned tribunal in awarding compensation has considered ***Delhi Transport Corporation Versus Arun Sondhi [1997 ACJ 1286],*** where injured was 21 years of age and 100% paraplegic, the Court has awarded Rs.8,68,781 to the injured, ***National Insurance Co. Ltd. Versus A. Kala Mohan and Another [1998 ACJ 295]*** where injured was 34 years of age and 100% paraplegic, the Court has awarded

Rs.6,49,000/-, ***Rajeev Jajodiya Versus Jitendra Kumar Sharma and Others [2000 ACJ 1411],*** where injured was 21 years of age and paraplegic with 100% disability, the Court has awarded Rs.6 lacs and ***Jyoti Gupta Versus Ashok Kumar and Others [2002 ACJ 1056],*** where injured was 33 years of age with 70% disability due to injury in spine, the Court has awarded Rs.6,81,161/- compensation. In the facts and circumstances of the present case, I am of the view that amount of Rs.4,50,000/-, along with 9% interest per annum from the date of petition till realization awarded by learned tribunal is just and reasonable. The Corporation has failed to make out any case for interference. The findings returned by learned tribunal on negligence as well as on quantum of compensation are confirmed. The appeal of the Corporation is dismissed.

19. The petitioner no doubt has become 100% disable on account of his paraplegic condition due to accident in question. The petitioner has not led any evidence giving details of expenses incurred by him on his treatment. The petitioner has not placed any material on record so as to enhance the compensation. The tribunal has awarded him various amounts under different heads in Para-13 of the impugned award keeping in view his injuries suffered by him in the accident. The petitioner is not entitled to any further enhancement of compensation. The cross objections are accordingly dismissed.

20. The result of above discussion is that the appeal and cross objections are dismissed. The impugned award is upheld.

(Kuldip Singh)
Judge.

July 02, 2007
(soni)